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February 5, 2009

E. Mark Braden  
direct dial:

Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463  
Attn: Frankie D. Hampton

Re: *National Association of Home Builders - Matter Under Review 6122*

Dear Ms. Hampton :

In November of last year, the National Association of Home Builders ("NAHB") received notice from the Federal Election Commission ("Commission") of a "complaint" it received, indicating a possible violation of the Federal Election Campaign Act of 1971, as amended ("Act"). A copy of a "complaint" from Aaruni Thakur and Jenny Hall was enclosed with the Commission letter. The complaint was defective on its face. The deficiency suffered by the complaint was that none of the information contained therein had been sworn to by either Thakur or Hall. In addition to being in writing, signed and notarized, a complaint must be "sworn to by the person filing" the complaint and "made under penalty of perjury."<sup>1</sup> Since neither the materials bearing Ms. Thakur's name nor those bearing Ms. Hall's name contained language that could be construed as swearing to the accuracy of the statements and information in the complaint, the complaint did not satisfy the "sworn to" requirement.

The General Counsel office has apparently decided to provide legal assistance to Aaruni Thakur in the correcting of the complaint. At the General Counsel's direction, a new complaint was prepared and received from Aaruni Thakur. The correction of the defect in the jurat portion of the complaint does not make this a matter on which the Commission should spend more than minimal time and resources before its closure without further action. The new complaint and its accompanying documents fail to provide the Commission with any allegations or facts that would warrant further review by the Commission.

NAHB did mail literature addressed to the Hall family in Diamond Bar, California. The "scanned copy of the mailer" enclosed with the complaint is a copy of a mailer produced and mailed by NAHB. We have enclosed with this response an original version of the mailer to facilitate the Commission's review and prompt dismissal of this matter.

<sup>1</sup> 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.4(a)-(c).

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Aaruni Thakur's statement that "the National Association of Home Builders has conducted an impermissible solicitation outside their restricted class" is plainly wrong. The mailer makes no request for contributions to NAHB or its connected political committee. Whether Thakur or Hall are in NAHB's "restricted class", as defined by the Commission's regulations, is not material in this matter. The mailer asks for no contributions nor does the mailer provide a means by which the recipient of the document could make a contribution to NAHB, its connected political committee, any campaign committee or any other organization.

The mailer is not campaign literature or a campaign brochure. Therefore these characterizations in the letters from Aaruni Thakur and Jenny Hall are also wrong. As is clear from the language of the mailer, the mailer is not expressly advocating the election or defeat of any candidate for federal office.

The Commission's regulations set forth phrases and language which define communication which expressly advocates the election or defeat of candidates.<sup>2</sup> These phrases or language are not present in this mailer. There is no "vote for," "cast your ballot," "defeat," or "support" language in the mailer. There is no reference to any campaign. There is no reference to any political party. There is no reference to any opposing candidate. In fact, the words "candidate," "campaign," "election" and their recognizable synonyms do not appear in the mailer. Simply, there is no electoral portion of the communication. It discusses issues, not elections.

Reasonable minds cannot differ as to the action which the mailer encourages. By its plain language, the mailer encourages the recipients to contact Congressman Gary Miller at his congressional office, the official web address and "thank him for fighting for working families in southern California." The issues discussed in the mailer were current issues before Congress of vital importance to NAHB and its members. There is no discussion of elections, political parties, partisan platform or any political campaign.

The mailer was created solely at the direction of NAHB and its employees. Neither Congressman Gary Miller, his agents, his campaign nor any political party representatives had any role in the creation and production of the mailer. The mailer does not use any candidate's campaign materials.

The mailer was not created, produced or distributed at the suggestion or request of a candidate, any authorized committee or political party committee. No candidate, authorized committee or political party committee was involved in any decision regarding the content of the mailer. The intended audience for the mailer, means of the communication, media used, timing of the mailer were decisions solely of NAHB.

No vendor in common with Congressman Miller (other than the U.S. Postal Service) was used in the creation and/or distribution of the mailer. There was no formal or informal agreement or collaboration between Congressman Miller, his authorized committee or agents with NAHB in regard to any aspect of the mailer. There was no discussion substantial or insubstantial in regard to this mailer with any candidate,

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<sup>2</sup> 11 C.F.R. § 100.22(a).

authorized committee, party committee or their agents prior to its production and distribution. It is unambiguous that this mailer was not a coordinated communication, as defined by the Commission's regulations.<sup>3</sup> As a mailer, it cannot be an electioneering communication since it was not a broadcast, cable or satellite communication.<sup>4</sup>

This mailer, NAHB's public discussion of issues of vital importance to the home building industry, is outside the scope of the Commission's authority to regulate.

Enclosed with the letter is an affidavit executed by Stephen T. Gallagher, Staff Vice President Government Affairs of NAHB, confirming this letter's description of the circumstance of the creation and distribution of the mailer. Also enclosed is a document entitled "NAHB Issue Communication Pledge." This pledge was signed by all NAHB personnel involved in the mailer's production and distribution.

There remain no relevant issues for the General Counsel's office to consider in regard to this matter. It should be immediately closed.

Sincerely,



Mark Braden

Enclosures

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<sup>3</sup> 11 C.F.R. §§ 109.20; 109.21.

<sup>4</sup> 11 C.F.R. § 100.29.

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TO CONTACT GARY MILLER GO TO  
[WWW.GARYMILLERHOUSE.GOV](http://WWW.GARYMILLERHOUSE.GOV)

Paid for by the National Association of Home Builders  
1201 15th St., NW  
Washington, DC 20005

Presort Standard  
US Postage  
PAID  
Dodd Printing



EXHIBIT A



**NEXT TIME YOU  
THANK HIM FOR  
WORKING FAMILIES IN**

# GARY MILLER

## PROTECTING THE AMERICAN DREAM

- ✓ Gary voted to create a \$7,500 temporary first-time home buyer tax credit.
- ✓ Voted for legislation to make more mortgage bonds available.
- ✓ He voted for legislation to help victims of the sub-prime crisis.

## ENERGY INDEPENDENCE IS NO LONGER JUST A ECONOMIC ISSUE, BUT ALSO A NATIONAL SECURITY ISSUE.

- ✓ Gary supports increased development of clean coal, natural gas, and oil.
- ✓ Supports increasing domestic exploration in Alaska and off our coast.

Congressman Miller supports incentives to encourage further development and use of oil, coal, and natural gas.

